

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Joseph Lee McFadden,)	
)	
Petitioner,)	
)	
vs.)	Civil Action No. 5:12-1486-TLW-KDW
)	
Warden, Ridgeland Correctional Institution,)	
)	
Respondent.)	ORDER
)	
_____)	

Petitioner Joseph Lee McFadden, (“Petitioner”), brought this civil action, *pro se*, pursuant to 28 U.S.C. § 2254 on June 5, 2012. (Doc. # 1).

The matter now comes before this Court for review of the Report and Recommendation (“the Report”) filed by United States Magistrate Judge Kaymani D. West, to whom this case had previously been assigned. In the Report, the Magistrate Judge recommends that the Petitioner’s § 2254 petition be dismissed without prejudice, pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02 (D.S.C.). (Doc. # 23). Petitioner filed a timely Objection. (Doc. # 25). In conducting its review, the Court therefore applies the following standard:

The magistrate judge makes only a recommendation to the Court, to which any party may file written objections...The Court is not bound by the recommendation of the magistrate judge but, instead, retains responsibility for the final determination. The Court is required to make a *de novo* determination of those portions of the report or specified findings or recommendation as to which an objection is made. However, the Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the Report and Recommendation to which no objections are addressed. While the level of scrutiny entailed by the Court's review of the Report thus depends on whether or not objections have been filed, in either case, the Court is free, after review, to accept, reject, or modify any of the magistrate judge's findings or recommendations.

Wallace v. Housing Auth. of the City of Columbia, 791 F. Supp. 137, 138 (D.S.C. 1992)
(citations omitted).

In light of the standard set forth in Wallace, the Court has reviewed, de novo, the Report and the Petitioner's Objection. After careful review of the Report and Objection thereto, the Court **ACCEPTS** the Report. (Doc. # 23). Petitioner's § 2254 petition is dismissed without prejudice.

The Court has reviewed this petition in accordance with Rule 11 of the Rules Governing Section 2254 Proceedings. The Court concludes that it is not appropriate to issue a certificate of appealability as to the issues raised herein. Petitioner is advised that he may seek a certificate from the Fourth Circuit Court of Appeals under Rule 22 of the Federal Rules of Appellate Procedure.

IT IS SO ORDERED.

s/Terry L. Wooten
TERRY L. WOOTEN
United States District Judge

December 11, 2012
Florence, South Carolina